

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, September 21, 2021

Hearing Room 1675

2:30 PM

2:00-000000

Chapter

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<https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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2:19-15982 Daniel Hyun You

Chapter 7

#1.00 Cont'd hearing re: Trustee's motion to sell real property located at 1165 W. 225th Street, Torrance, CA 90502; (1) Outside the Ordinary Course of Business; (2) Free and Clear of Liens, Claims, and Interests Under 11 U.S.C. Section 363(f); (3) For Good Faith Determination Under 11 U.S.C. Section 363(m); and (4) for Waiver of 14 day stay fr. 8/31/21

Docket 101

Tentative Ruling:

Updated supplemental tentative ruling as of 9/21/21. The court supplements its tentative ruling of 9/18/21. The court has reviewed the supplemental service declaration of D. Edward Hays, counsel for trustee, describing the manner of service of the moving papers as supplemented on lienholder Wells Fargo Bank, N.A. Based on proof of service on the addresses of the bank as judgment creditor listed on the abstract of judgment, the court determines that service on the bank lienholder is sufficient.

Prior tentative ruling as of 9/18/21. It appears that trustee has cured the service defect on serving lienholder Aju Small but Great Fund 5 with supplemental service on the notice party listed on the proof of claim. Regarding service of supplemental motion on the newly discovered secured lienholders, Bank of Hope and Wells Fargo Bank, N.A., it appears that service on lienholder Bank of Hope is sufficient. As to lienholder Wells Fargo Bank, N.A., it is unclear what addresses were used for service since the addresses are not the ones on the FDIC BankFind website for the bank or the address on the proof of claim filed by the bank for its unsecured credit card debt claim, and it is also unclear that the entity Wells Fargo, N.A., on the proof of service is the same as Wells Fargo Bank, N.A., on the title report. Counsel should explain where the addresses come from, as the indications on the proof of service state that they came from the escrow (i.e., from an abstract of judgment?). Also, since the title report indicates that title is the name of debtor and his spouse as joint tenants, does the court need to make a finding regarding the property as community property? Debtor's bankruptcy schedules list the property as community property, and the spouse was served with the moving papers. If the lienholders were properly served, then

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it appears that 11 U.S.C. 363(f)(2) applies that there is implied consent of the lienholders to the sale for lack of opposition despite service. Based on the subordination agreement with East West Bank and Eui Jung Lee, the estate will realize value to pay administrative, priority and unsecured claims, which indicates the reasonable exercise of business judgment to justify the sale. Based on the declaration of Mitchell Rubin, the proposed purchaser, and in the absence of any objection, the court can make a finding that he is a good faith purchaser within the meaning of 11 U.S.C. 363(m). In the absence of any objection, the court can also find it appropriate to waive the 14-day stay on the effectiveness of the sale order under FRBP 6004(h).

Appearances are required on 9/21/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 8/27/21. Service of the motion appears to be deficient as all creditors must be served with notice of the motion pursuant to FRBP 2002(a)(2), and the proof of service of the notice of motion does not indicate service on secured creditor, Aju Small but Great Fund 5, at its address of record on the creditor mailing matrix and on its proof of claim (stating that Pio S. Kim is the designated noticee for Aju, and notice was not served on him either by mail or electronically). The proof of service indicates service on several attorneys who are counsel for the creditor by electronic notice, but not on the creditor by mail. There is no indication of authorization of the creditor to accept service of notices regarding its claim other than as stated on its proof of claim or for counsel to accept service on its behalf for notices under FRBP 2002. See *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Proper service on this creditor is critical because the trustee is seeking to sell free and clear of this creditor's lien pursuant to 11 U.S.C. 363(f), and it is unclear whether such sale free and clear of lien is proper. See *Clear Channel Outdoor, Inc. v. Knupfer*, 391 B.R. 25 (9th Cir. BAP 2008); but see, *In re Joan, Inc.*, 403 B.R. 866 (Bankr. W.D. Wash. 2009). Trustee relies upon *In the Matter of Spanish Peaks Holdings II, LLC*, 872 F.3d 892 (9th Cir. 2017) to argue that the sale may be free and clear of Aju's lien without providing payment for it because it may receive no payment upon foreclosure, but that case involved a leasehold interest under Montana law rather than a lien interest under California law as in California law. The Ninth Circuit in *Spanish*

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Peaks did not overrule or refer to Clear Channel. Also, trustee will need to address the limited opposition of U.S. Bank regarding the the first lien on the property, though it appears that the trustee agrees that the lien needs to be paid in full as demanded by the lienholder and that the effect will reduce the net sales proceeds by about \$60,000 of the \$220,000 estimated in the moving papers. Appearances are required on 9/1/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Daniel Hyun You

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Laila Masud
D Edward Hays
Chad V Haes